

A.G. Contract No.: KR04-0030TRN
ADOT ECS FILE No.: JPA 03-044
Project: 202L, Santan Freeway
Section: Elliot Rd. - Baseline Rd.
TRACS No.: H5915 01C
Budget Source Item No.: 80204

AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
KB HOME PHOENIX INC.

THIS AGREEMENT is entered into 25th June, 2004 between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and KB HOME PHOENIX INC., an Arizona corporation, acting by and through its duly authorized Senior Vice President, ("KB").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-408 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. KB has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Corporation.

3. Incident to the State's improvement project on the Santan Freeway, (SR 202L), between Elliot Road and Baseline Road, KB has requested the State, design and construct three noise walls to State standards (herein referred to as walls G2, B1 and B2), adjacent to their two developments, Marbella and Arizona Skyline, as shown in Exhibit A. Two of the three walls, G2 and B1, will extend the entire length of the property frontage along the freeway right-of-way. The third wall, B2 will be constructed between the Baseline Road entrance ramp and the freeway mainline for the Marbella development. The three walls may be collectively referred to herein as the "Project". The State has agreed to include the walls in the State's referenced improvement project on SR 202L. Subject to reimbursement as set forth herein, KB has agreed to fund the walls at an estimated cost of \$1,426,416.00, which includes a fixed rate of 14% for construction engineering and administration costs and a fixed rate of 5% for design engineering administration costs. A summary of costs associated with the Project is detailed on Exhibit A, attached hereto and made a part hereof. The purpose of this agreement is to define each party's responsibilities for the Project.

4. The parties hereto agree and acknowledge that both parties will perform their responsibilities consistent with this agreement.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26928
Filed with the Secretary of State
Date Filed: 06/25/04

Janice K. Brewer
Secretary of State

By: Timothy D. Greenwald

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this agreement, invoice KB \$1,426,216.00 for the estimated cost of the Project, including a fixed rate of 14% for construction engineering and administration and a fixed rate of 5% for design engineering administration costs, as shown on Exhibit A.

b. Provide design plans, specifications and other such documents and services required for the bidding and construction of the Project; and all of the foregoing shall meet all applicable State standards.

c. Call for bids; award one or more contracts to accomplish the Project; administer the same; make all payments to the contractor(s); and be responsible for any contractor claims for extra compensation attributable to the State.

d. Upon completion of the design and construction of the referenced Project, the State shall promptly provide KB with a written statement setting forth the as-built square footage of each of the completed walls included in the Project and, based unit prices shown on Exhibit A, a calculation of the actual cost of the walls (including the fixed cost of 14% for construction engineering and administration and a fixed cost of 5% for design engineering administration of the Project). In the event the as-built cost of the walls (or any individual wall) is less than that shown on Exhibit A for any wall, the State shall promptly reimburse KB one-half (1/2) of the reduced cost associated with any wall or the walls(s).

e. Upon completion, the State will approve and accept the referenced Project on behalf of the parties hereto; provide maintenance to the structural integrity of all of the walls; and provide maintenance to the freeway side of the walls G2 and B1, including, without limitation, graffiti removal; and provide maintenance to both sides of wall B2 including, without limitation, graffiti removal.

2. KB will:

a. Upon execution of this agreement and receipt of an invoice, KB shall remit to the State \$1,426,416.00, for the estimated cost of the Project, which includes a fixed rate of 14% for construction engineering and administration costs and a fixed rate of 5% for design engineering administration costs, as shown on Exhibit A.

b. Be responsible for any contractor claims for extra compensation attributable to KB.

c. In the event KB elects to terminate this agreement prior to completion of the Project, as provided for herein, KB shall be responsible for all costs incurred by the State up to the time of such termination.

d. KB, or its successors and assigns, shall grant the State access to the private side of the walls G2 and B1 for structural maintenance as needed.

e. Upon completion and acceptance of the Project by the State, KB, or its successors and assigns, shall provide maintenance to the private side of the walls G2 and B1, including graffiti removal.

III. MISCELLANEOUS PROVISIONS

1. This terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written

notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the KB, the State shall in no way be obligated to maintain said project and KB will be responsible for all costs incurred by the State up to the time of cancellation.

2. This agreement shall become effective upon signature of the parties hereto.
3. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.
4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy that may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

6. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

7. **Non-Availability of Funds:** Every payment obligation of State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

KB Home Phoenix Inc.
Director of Land Development
432 North 44th Street, Suite 200
Phoenix, AZ 85008

With copy to :

KB Home Phoenix Inc.
Emily J. Auckland, Esq.
432 N. 44th Street, Suite 200
Phoenix, AZ 85008

9. Attached hereto is the written determination of each party's legal counsel the parties are authorized under the laws of this State to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

KB HOME PHOENIX INC.,
an Arizona corporation

STATE OF ARIZONA
Department of Transportation

By

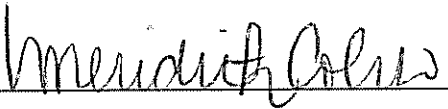

JAMES H. WRIGHT
Senior Vice President of Land

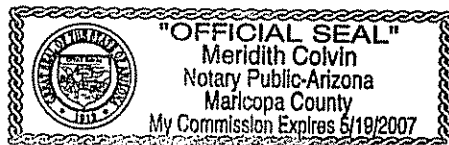
By


DANIEL S. LANCE, P.E.
Deputy State Engineer

ATTEST:

By





**EXHIBIT A
SUMMARY**

**SANTAN FREEWAY (SR 202L)
DESCRIPTION AND COST OF PAY ITEMS FOR KB HOME NOISE WALLS**

ITEM	COST		DESCRIPTION
	DESIGN	CONSTRUCTION	
1A 2 NEW NOISE WALLS FOR MARBELLA	\$38,411	\$846,220	\$884,631 Cost to design and construct 2 noise walls and roadway barrier along the Marbella development.
Item 1A Sub-Total:	\$38,411	\$846,220	\$884,631
14% CONSTRUCTION ENGINEERING AND ADMINISTRATION	\$0	\$118,471	\$118,471 Construction Engineering and Administration was calculated on a percentage basis of the construction cost of the KB Item.
5% DESIGN ENGINEERING ADMINISTRATION	\$1,921	\$0	\$1,921 Design Engineering Administration was calculated on a percentage basis of the design cost of the KB Item.
ITEM 1A TOTAL	\$40,332	\$964,691	\$1,005,023
1B 1 NEW NOISE WALL FOR ARIZONA SKYLINE	\$24,770	\$545,439	\$570,209 Cost to design and construct 1 noise wall along the Arizona Skyline development.
Item 1B Sub-Total:	\$24,770	\$545,439	\$570,209
14% CONSTRUCTION ENGINEERING AND ADMINISTRATION	\$0	\$76,361	\$76,361 Construction Engineering and Administration was calculated on a percentage basis of the construction cost of the KB Item.
5% DESIGN ENGINEERING ADMINISTRATION	\$1,239	\$0	\$1,239 Design Engineering Administration was calculated on a percentage basis of the design cost of the KB Item.
ITEM 1B TOTAL	\$26,009	\$621,800	\$647,809
ITEM 1 SUB TOTAL	\$66,341	\$1,586,491	\$1,652,832
ITEM 1 BASELINE			\$1,200,000 Baseline estimate initially proposed to KB.
COST SHARE DIFFERENCE			\$452,832 50/50 split of difference in cost between Item 1 sub total and the Item 1 Baseline costs.
50/50 COST SHARE			\$226,416 Item 1 Grand Total calculated by adding the 50/50 Cost Share amount to the Item 1 Baseline cost.
ITEM 1 GRAND TOTAL			\$1,426,416

EXHIBIT A
SUMMARY BACKUP

Item No	Item Description	Unit	Quantity	Unit Price	Amount
1	KB HOME MARBELLA NOISE WALLS				
2	ESTIMATED COST				
3					
4	CONCRETE BARRIER (SPECIAL HALF) (C-10.62) (DETAIL D)	L.FT.	1,720	\$ 80.00	\$ 137,600.00
5	SOUND BARRIER WALL (MASONRY)	SQ.FT.	34,997	\$ 18.00	\$ 629,946.00
6					
7	SUBTOTAL CONSTRUCTION COST (1)				\$767,546.00
8					
9	CONSTRUCTION SURVEYING AND LAYOUT SHARE	L.SUM	1	1.50%	\$11,513.00
10	CONTRACTOR QUALITY CONTROL SHARE	L.SUM	1	0.75%	\$5,757.00
11	MOBILIZATION SHARE	L.SUM	1	8.00%	\$61,404.00
12					
13	SUBTOTAL CONSTRUCTION COST (2)				\$846,220.00
14	DESIGN ENGINEERING	L.SUM	1	5.00%	\$38,411.00
15	KB HOME SUBTOTAL				\$884,631.00
16					
17					
18					

EXHIBIT A
SUMMARY BACKUP

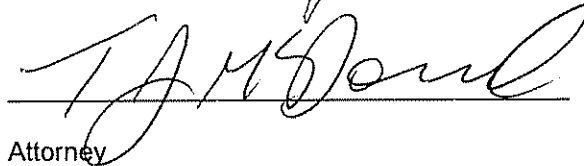
Item No	Item Description	Unit	Quantity	Unit Price	Amount
1	KB HOME ARIZONA SKYLINE NOISE WALL				
2	ESTIMATED COST				
3					
4					
5	9140137 SOUND BARRIER WALL (MASONRY)	SQ.FT.	27,485	\$ 18.00	\$ 494,730.00
6					
7	SUBTOTAL CONSTRUCTION COST (1)				\$494,730.00
8					
9	CONSTRUCTION SURVEYING AND LAYOUT SHARE	L.SUM	1	1.50%	\$7,421.00
10	CONTRACTOR QUALITY CONTROL SHARE	L.SUM	1	0.75%	\$3,710.00
11	MOBILIZATION SHARE	L.SUM	1	8.00%	\$39,578.00
12					
13	SUBTOTAL CONSTRUCTION COST (2)				\$545,439.00
14	DESIGN ENGINEERING	L.SUM	1	5.00%	\$24,770.00
15	KB HOME SUBTOTAL				\$570,209.00
16					
17					
18					

APPROVAL OF THE KB HOME PHOENIX, INC. ATTORNEY

I have reviewed the above referenced proposed agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION and the KB HOME PHOENIX, INC. and declare this agreement to be in proper form and within the powers and authority granted to the Corporation under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 10th day of June, 2004.



Attorney



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-0030TRN (**JPA 03-044**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: June 21, 2004

TERRY GODDARD
Attorney General

A handwritten signature in cursive script that reads "Susan Davis".

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section